



Steven W. Troxler
Commissioner

North Carolina Department of Agriculture
and Consumer Services
Veterinary Division

Joseph W. Reardon
Assistant Commissioner
for Consumer Protection

Douglas Meckes, DVM
State Veterinarian

April 4, 2022

Christy Morton
Owner
Carolina Doggie Playland
3111 S. Tryon Street
Charlotte, North Carolina 28217

NOTICE OF CIVIL PENALTY and NOTICE of WARNING

Re: CIVIL PENALTY ASSESSMENT for SECOND VIOLATION of TITLE 02 N.C. ADMINISTRATIVE CODE ("NCAC") CHAPTER 52J SECTION .0204(e); and NOTICE of WARNING for VIOLATIONS OF 02 NCAC .0201(a), (b) and (e); .0202(d); .0203(a); .0204(a) - (c); and .0207(b)(6).

AWS-CP-2022-7

**Facility: Carolina Doggie Playland
License #10617**

Dear Ms. Morton:

Pursuant to N.C. General Statute § 19A-40, I am issuing this notice that you individually and d/b/a Carolina Doggie Playland is hereby assessed a civil penalty of \$1,000.00 as provided in the enclosed Notice of Violation.

With regard to the civil penalty, within 60 days from the date of receipt, you must do one of the following:

1. Pay the civil penalty assessment; or
2. File a written petition for a contested case hearing with the N.C. Office of Administrative Hearings to appeal the penalty assessment.

Pursuant to N.C. General Statute § 150B-22, either party to a dispute may initiate informal settlement negotiations at any time. To negotiate a settlement of this assessment, you may contact me by telephone at (919) 707-3280. Settlement offers do not extend the 60-day deadline for payment or filing of a contested case petition.

Additional information about your options is provided below:

PAYMENT

To pay the penalty, please send your payment by check or money order made payable to the North Carolina Department of Agriculture and Consumer Services to:

North Carolina Department of Agriculture and Consumer Services
Dr. Patricia Norris
Director, Animal Welfare Section
1030 Mail Service Center
Raleigh, NC 27699-1030

APPEAL

If you file a contested case petition, it must be in writing and in the form prescribed by N.C.G.S. § 150B-23. The petition must be filed with the N.C. Office of Administrative Hearings ("OAH") within 60 days of your receipt of this document. Additionally, the petition must be accompanied by a filing fee of twenty dollars (\$20.00). Payment can be made by cash, money order, certified check or check drawn on an attorney's trust account. Make checks payable to: Office of Administrative Hearings. File the petition and one copy with:

Office of Administrative Hearings
6714 Mail Service Center
Raleigh, NC 27699-6714

Any questions about filing a petition may be directed to the Clerk of OAH by telephone at 919-431-3000.

You must serve NCDA&CS by mailing a copy of the petition to:

Mr. Jonathan Lanier
North Carolina Department of Agriculture and Consumer Services
Registered Agent and General Counsel
1001 Mail Service Center
Raleigh, NC 27699-1001

Payment of the penalty will not foreclose further enforcement action against you for any new violation. If the violations which resulted in the assessment are of a continuing nature, NCDA&CS reserves the right to assess additional civil penalties in the future or take other enforcement action against you.

Your attention to this matter is appreciated.

Sincerely,

A handwritten signature in dark ink, reading "Patricia Norris, DVM, MS". The signature is written in a cursive, flowing style.

Patricia Norris, DVM, MS
Director, Animal Welfare Section

Attachment: Notice of Violations, Assessment of Civil Penalty

cc: Michael Martin, DVM, State Veterinarian
Jonathan Lanier, General Counsel, NCDA&CS
Christina L. Waggett, Assistant Commissioner, NCDA&CS
Christopher R. McLennan, Assistant Attorney General

STATE OF NORTH CAROLINA
COUNTY OF WAKE

NORTH CAROLINA DEPARTMENT
OF AGRICULTURE AND CONSUMER
SERVICES, VETERINARY DIVISION
ANIMAL WELFARE SECTION

IN THE MATTER OF)	NOTICE of VIOLATIONS and
)	ASSESSMENT of CIVIL PENALTY
CHRISTY MORTON)	for SECOND VIOLATION of TITLE 02
OWNER OF)	N.C. ADMINISTRATIVE CODE CHAPTER
CAROLINA DOGGIE PLAYLAND)	52J SECTION .0204(e); and NOTICE of
)	WARNING for VIOLATION OF 02 NCAC
)	52J .0201(a), (b) and (e); .0202(d); .0203(a);
)	0204(a) - (c); and .0207(b)(6).
)	

Acting pursuant to N.C. General Statute § 19A-40, Dr. Patricia Norris, Director, Animal Welfare Section ("AWS"), North Carolina Department of Agriculture and Consumer Services ("NCDA&CS") makes the following:

FINDINGS OF FACT

1. At all times pertinent to this matter, Carolina Doggie Playland ("the kennel") was a boarding kennel, licensed pursuant to N.C. General Statute ("NCGS") § 19A-28.
2. On March 15, 2022, AWS received a complaint concerning the care of the animals at the kennel. AWS initiated an investigation based on the information contained in the complaint. The investigation centered on possible violation(s) of the N.C. Animal Welfare Act ("AWA") as these statutes and associated regulations are the extent of the jurisdiction of AWS.
3. On March 16, 2022, AWS Animal Health Technicians Jay Blatche ("Inspector Blatche") and Christie Shore ("Inspector Shore") conducted an unannounced site visit as part of the complaint investigation. The AWS Inspectors conducted a Facility Compliance Inspection ("FCI") on March 16, 2022 during the investigation. This FCI was noted as "Disapproved" due to the number, severity and repetitive nature of the violations. The March 16, 2022 FCI noted the following:
 - a. 48 dogs were housed in the play area with only 4 supervising employees monitoring the dogs in violation of 02 NCAC 52J .0204(e);
 - b. the bottom of the frame for the overhead door and several support beams are rusting and are not being maintained in good repair in violation of 02 NCAC 52J .0201(a);
 - c. electrical outlets within reach of the dogs are uncovered in violation of 02 NCAC 52J .0201(b);
 - d. food waste and other debris was observed behind multiple cages in violation of 02 NCAC 52J .0201(e);
 - e. damaged wood and rusting metal are present throughout the facility in violation of 02 NCAC 52J .0202(d), which requires the interior building surfaces to be impervious to moisture and able to be readily sanitized;
 - f. the cracks in the concrete in the primary enclosures and walkways are not sealed in violation of 02 NCAC 52J .0203(a);
 - g. areas of fencing in the outdoor play yards have rusted through in violation of 02 NCAC

52J .0203(a), which requires the surfaces in the outdoor facilities to be impervious to moisture;

h. plastic panels on the outside wall of the building are being held up by duct tape and must be removed and cleaned;

i. damaged wood in the primary enclosures which the animals can contact were in violation of 02 NCAC 52J .0204(a);

j. the ceiling tiles in the Littles room continue to break and are not structurally sound in violation of 02 NCAC 52J .0204(b). This violation was also cited on the previous FCIs;

k. many of the dog beds are damaged and therefore cannot be easily sanitized in violation of 02 NCAC 52J .0204(c); and

l. food waste and debris were present behind multiple kennels and the chain-link enclosures in violation of 02 NCAC 52J .0207(b)(6). This violation was also cited on the September 30, 2021 FCI;

4. A review of the AWS documents relevant to this kennel notes that AWS assessed a Civil Penalty to the kennel on January 15, 2021. The Civil Penalty was, in part, \$1,000.00 for 2 violations (\$500.00 per violation) of 02 NCAC 52J .0204(e) for failing to have at least one person supervising each 10 dogs housed within the play area on December 10, 2020 and again on January 7, 2021.
5. A review of the FCIs for this kennel show that there has not been an "Approved" rating for this kennel for the 2021-2022 fiscal year. The FCI on August 4, 2021 was rated as Contingently Approved. The follow-up FCI on September found insufficient progress on correction of the previously-cited violations as well as additional violations. Therefore, this September 30, 2022 FCI was noted as "Disapproved." Due to the number, severity and repetitive nature of the violations cited during the March 16, 2022 FCI, it was also noted as "Disapproved."
6. The January 15, 2021 Notice of Civil Penalty and Notice of Warning and the FCIs referenced herein were made available to the kennel owner and can be found on the AWS website at:
<http://www.ncagr.gov/vet/aws/>.

CONCLUSIONS

As a result of this investigation, AWS concludes that the kennel, either by act or omission, violated the following provisions:

02 NCAC 52J .0201(a) for failing to maintain housing facilities in good repair;

02 NCAC 52J .0201(b) for failing to cover electrical outlets in the reach of animals;

02 NCAC 52J .0201(e) for failing to remove animal and food waste daily;

02 NCAC 52J .0202(d) for failing to maintain the interior building surfaces with which animals come in contact with impervious to moisture and able to be readily sanitized;

02 NCAC 52J .0203(a) for failing to maintain sealed concrete surfaces impervious to moisture in the primary enclosures and walkways;

02 NCAC 52J .0204(a) for failing to maintain surfaces of primary enclosures impervious to moisture and failure to replace damaged wood with the reach of animals;

02 NCAC 52J .0204(b) for failing to maintain primary enclosures in good repair;

02 NCAC 52J .0204(c) for failing to repair or replace the damaged resting surfaces;

02 NCAC 52J .0204(e) for failing to have at least one person supervising each 10 dogs housed within the play area on March 16, 2022;

02 NCAC 52J .0207(b)(6) for failure to keep areas accessible to multiple animals clean and sanitary.

CIVIL PENALTY

As required by N.C. General Statute § 19A-40, in determining the amount of the civil penalty, I have considered the degree and extent of harm caused by the violations listed above.

Accordingly, Christy Morton, as owner and operator of Carolina Doggie Playland, is hereby assessed a civil penalty for the following violation:

\$1,000.00 for the violation of 02 NCAC 52J .0204(e) for failing to have at least one person supervising each 10 dogs housed within the play area on March 16, 2022. This is the Second violation of 02 NCAC 52J .0204(e) for this kennel.

\$1,000.00 TOTAL AMOUNT ASSESSED

(See Appendix for text of referenced General Statutes and Administrative Code)

NOTICE OF WARNING

As to the remaining violations of 02 NCAC 52J .0201(a), (b) and (e); .0202(d); .0203(a); .0204(a) - (c); and .0207(b)(6), this Warning Letter serves as written notice indicating in which respects the kennel may have violated the NC Animal Welfare Act and the rules issued pursuant thereto. The facility owner is directed to immediately comply with the AWA and its associated rules.

The kennel is hereby noticed that a boarding kennel license may not be renewed if there is not an "Approved" rating for at least one FCI in the fiscal year preceding the renewal application submission. To date, there has not been an "Approved" rating for this kennel for the 2021-2022 fiscal year. Therefore, should the kennel fail to correct these violations and fail to fully comply with the AWA and its associated rules, and thereby achieve an Approved rating on a FCI before June 30, 2022, the kennel's boarding kennel license renewal application may be denied.

Continued or future violation of these statutes or regulations will be considered a willful disregard or violation of the N.C. Animal Welfare Act and the rules issued pursuant thereto. Such willful disregard or violation may result in action against your facility's license pursuant to N.C. General Statute § 19A-30 and/or the assessment of a civil penalty of up to \$5,000.00 per violation under N.C. General Statute § 19A-40.

April 4, 2022

Date

Patricia Norris, DVM, MS

Patricia Norris, DVM, MS

Director, Animal Welfare Section

North Carolina Department of

Agriculture & Consumer Services

Appendix

REFERENCED LAWS AND REGULATIONS

§ 19A-28. License required for public auction or boarding kennel.

No person shall operate a public auction or a boarding kennel unless a license to operate such establishment shall have been granted by the Director. Application for such license shall be made in the manner provided by the Director. The license period shall be the fiscal year and the license fee shall be seventy-five dollars (\$75.00) for each license period or part thereof beginning with the first day of the fiscal year. (1977, 2nd Sess., c. 1217, s. 9; 1987, c. 827, s. 65; 1989, c. 544, s. 18; 2011-145, s. 31.5(b).)

§ 19A-30. Refusal, suspension or revocation of certificate or license.

The Director may refuse to issue or renew or may suspend or revoke a certificate of registration for any animal shelter or a license for any public auction, kennel, pet shop, or dealer, if after an impartial investigation as provided in this Article he determines that any one or more of the following grounds apply:

- (1) Material misstatement in the application for the original certificate of registration or license or in the application for any renewal under this Article;
- (2) Willful disregard or violation of this Article or any rules issued pursuant thereto;
- (3) Failure to provide adequate housing facilities and/or primary enclosures for the purposes of this Article, or if the feeding, watering, sanitizing and housing practices at the animal shelter, public auction, pet shop, or kennel are not consistent with the intent of this Article or the rules adopted under this Article;
- (4) Allowing one's license under this Article to be used by an unlicensed person;
- (5) Conviction of any crime an essential element of which is misstatement, fraud, or dishonesty, or conviction of any felony;
- (6) Making substantial misrepresentations or false promises of a character likely to influence, persuade, or induce in connection with the business of a public auction, commercial kennel, pet shop, or dealer;
- (7) Pursuing a continued course of misrepresentation of or making false promises through advertising, salesmen, agents, or otherwise in connection with the business to be licensed;
- (8) Failure to possess the necessary qualifications or to meet the requirements of this Article for the issuance or holding of a certificate of registration or license.

The Director shall, before refusing to issue or renew and before suspension or revocation of a certificate of registration or a license, give to the applicant or holder thereof a written notice containing a statement indicating in what respects the applicant or holder has failed to satisfy the requirements for the holding of a certificate of registration or a license. If a certificate of registration or a license is suspended or revoked under the provisions hereof, the holder shall have five days from such suspension or revocation to surrender all certificates of registration or licenses issued thereunder to the Director or his authorized representative.

A person to whom a certificate of registration or a license is denied, suspended, or revoked by the Director may contest the action by filing a petition under G.S. 150B-23 within five days after the denial, suspension, or revocation.

Any licensee whose license is revoked under the provisions of this Article shall not be eligible to apply for a new license hereunder until one year has elapsed from the date of the order revoking said license or if an appeal is taken from said order of revocation, one year from the date of the order or final

judgment sustaining said revocation. Any person who has been an officer, agent, or employee of a licensee whose license has been revoked or suspended and who is responsible for or participated in the violation upon which the order of suspension or revocation was based, shall not be licensed within the period during which the order of suspension or revocation is in effect.

§ 19A-40. Civil Penalties.

The Director may assess a civil penalty of not more than five thousand dollars (\$5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Director shall consider the degree and extent of harm caused by the violation. The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

02 NCAC 52J .0201 GENERAL

- (a) Housing facilities for dogs and cats shall be structurally sound and maintained in good repair to protect the animals from injury, contain the animals and restrict the entrance of other animals and people.
- (b) All light fixtures and electrical outlets in animal areas shall be in compliance with the State Building Code.
- (c) Provisions shall be made for the daily removal and disposal of animal and food waste, bedding and debris from the housing facility in accordance with local ordinances, to assure facility will be maintained in a clean and sanitary manner.

History Note: Authority G.S. 19A-24; Eff. April 1, 1984; Amended Eff. January 1, 2005.

02 NCAC 52J .0202 INDOOR FACILITIES

- (d) Interior building surfaces of indoor facilities with which animals come in contact shall be constructed and maintained so that they are impervious to moisture and can be readily sanitized.

History Note: Authority G.S. 19A-24; Eff. April 1, 1984; Amended Eff. January 1, 2005.

02 NCAC 52J .0203 OUTDOOR FACILITIES

- (a) In outdoor facilities that are subject to the Animal Welfare Act, primary enclosures and walkways with which an animal comes in contact shall be constructed of sealed concrete or other surfaces impervious to moisture. Gravel may be used if maintained at a minimum depth of six inches and kept in a sanitary manner.

History Note: Authority G.S. 19A-24; Eff. April 1, 1984; Amended Eff. March 23, 2009; January 1, 2005.

02 NCAC 52J .0204 PRIMARY ENCLOSURES

- (a) Primary enclosures shall be constructed so as to prevent contamination from waste and wastewater from animals in other enclosures. All surfaces with which an animal comes in contact shall be impervious to moisture. For primary enclosures placed into service on or after January 1, 2005, no wood shall be within the animal's reach. For primary enclosures in use in a licensed or registered facility prior to January 1, 2005, any damaged wood must be replaced in a manner that does not permit contact with wood by the animal.
- (b) Primary enclosures for dogs and cats shall be structurally sound and maintained in good repair and in a manner to prevent injury to animals and keep other animals out. Primary enclosures shall be constructed so as to provide space to allow each dog or cat to walk, urn about freely, and to easily stand, sit, or lie in a

natural position. The height of a primary enclosure other than a cage shall be no less than five feet. All enclosures shall be constructed to prevent the escape of animals.

(c) Each primary enclosure shall be provided with a solid resting surface or surfaces adequate to comfortably hold all occupants of the primary enclosure at the same time. All resting surfaces must be of a non-porous or easily sanitized material, such as a towel, or a disposable material such as newspaper. The resting surface or surfaces shall be elevated in primary enclosures housing two or more cats.

(e) If more than four dogs are housed in a common area or enclosure, then there must be at least one person supervising each 10 dogs housed within each enclosure or common area.

History Note: Authority G.S. 19A-24; Eff. April 1, 1984; Amended Eff. January 1, 2005; April 1, 1985.

02 NCAC 52J .0207 SANITATION

(b) Sanitation shall be as follows:

(6) Any area accessible to multiple animals shall be kept clean and sanitary.

History Note: Authority G.S. 19A-24; Eff. April 1, 1984; Amended Eff. January 1, 2005; April 1, 1985.